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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,334	04/09/2004	Michael M. Bellick	ARP 5588.1	9991

321 7590 03/25/2005

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER
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SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/821,334

Applicant(s)

BELICK ET AL.

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/6/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrigues (5,881,405) in view of Cantwell (6,175,976).

Regarding claim 1, Garrigues discloses a ventilated personal shelter capable for use as a sleeping bag comprising an elongated shell 10 defining an inner column sized to receive a user therein. The shell has head and foot ends, left and right sides, and overlying and underlying portions (see Fig. 1). Garrigues further discloses a foot vent 40 in an overlying portion of foot end piece 16 between the left and right sides of the shell (see Fig.3). Garrigues further discloses a foot vent cover or closure 44 movable between a closed and open position for creating a vent opening (see Fig.4). Garrigues discloses that the opening 20 permits entry and exit of a sleeping bag and occupant within the invention (see column 3, lines 5-10).

Regarding claim 10, Garrigues discloses a mesh screen 42 that defines the foot vent 40 attached to edges of the shell for covering the vent opening. The mesh screen is fully capable of collapsing within the shell when the vent is closed because there is no rigid frame member

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permanently connected to the invention that would prevent the mesh screen from collapsing, particularly in the absence of a user placed inside the invention 10. Gravitational forces are certainly capable of forcing the mesh screen to collapse within the shell when the vent is closed and no rigid element, such the foot of a user, connected to the screen or end piece 16 prevents the mesh screen from collapsing.

However, Garrigues fails to disclose a fastener joining the overlying and underlying portions of the invention such that the overlying and underlying portions have be partially separated.

Cantwell (6,175,976) discloses a sleeping bag 10 with adjustable foot space wherein the bag comprises slide fasteners 30 that join overlying and underlying portions (22,24) and provide partial separation of the portions for easy entry and egress of an occupant (see column 2, lines 60-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Garrigues to comprise slide fasteners that join overlying and underlying portions, as taught by Cantwell, because Garrigues clearly discloses the desire for providing a point of entry and egress (see above). By providing slide fasteners on the side of the Garrigues invention, one is providing a functionally equivalent way of providing a means of egress and entry within the invention. Furthermore, the construction and design of the invention of Garrigues does not preclude installation of slide fasteners between the overlying and underlying portions of the invention.

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3. Claims 1-7, 11-13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basch (2,234,546) in view of Cantwell (6,175,976).

Regarding claims 1, 7, 11 and 16, Basch discloses a coverall garment 1 capable of being used as a sleeping bag comprising an elongated shell shaped to receive a user therein. The garment has head and foot ends, left and right sides, and overlying and underlying portions. Basch further discloses an embodiment of the garment comprising a closure or slide fastener 4 that creates an opening extending from the front of the garment, around the bottom of the garment and part way up the back to a point 35 (see Fig.6 and page 3, column 1, lines 19-25). When the slide fastener 4 is in the open position, it creates an open vent in longitudinal direction of the overlying portion of the garment adjacent to the foot end between the left and right side of the garment. The slide fastener can be opened or closed, thereby opening or closing the vent for ventilation of the inner volume of the garment. The two sides of the garment created when the slide fastener is in the open position function as separable edges.

Regarding claim 2, Basch discloses a coverall garment wherein the slide fastener extends longitudinally of the shell (see Fig.6).

Regarding claim 3, Basch discloses a coverall garment wherein the back point 35 of the vent permits the vent to extend longitudinally from the foot end of the garment to a distance corresponding to about 10-50 percent of the overall length of the garment, depending on where the slide fastener is located. As illustrated in Fig.6, the slide fastener 4 is located such that approximately 10-50 percent of the overall length of the garment is provided with a vent created by the partially open slide fastener.

Regarding claims 4 and 13, Basch discloses a coverall garment wherein the slide fastener is located about midway between the left and right sides of the garment.

Regarding claims 5, 6 and 12, Basch discloses a coverall garment wherein the bottom portion functions as an end panel closing the foot end of the garment. The slide fastener 4 creates a vent that extends into the bottom portion or end panel of the garment toward the underlying portion of the garment.

However, Basch fails to disclose a fastener joining the overlying and underlying portions of the invention such that the overlying and underlying portions have be partially separated.

Cantwell (6,175,976) discloses a sleeping bag 10 with adjustable foot space wherein the bag comprises slide fasteners 30 that join overlying and underlying portions (22,24) and provide partial separation of the portions for easy entry and egress of an occupant (see column 2, lines 60-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Basch to comprise slide fasteners that join overlying and underlying portions, as taught by Cantwell, because Basch clearly discloses the desire for providing a point of entry and egress. By providing slide fasteners on the side of the Basch invention, one is providing a functionally equivalent way of providing a means of egress and entry within the invention. Furthermore, the construction and design of the invention of Basch does not preclude installation of slide fasteners between the overlying and underlying portions of the invention.

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4. Claims 8, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basch and Cantwell, as applied to claims 1, 7 and 11 above, and further in view of Schaye (2,622,248).

Basch and Cantwell disclose features described above. Specifically, Basch discloses the features as described above wherein a slide fastener 4 can be opened or closed, thereby opening or closing the vent for ventilation of the inner volume of the garment. The two sides of the garment created when the slide fastener is in the open position function as separable edges. Basch's Fig.6 illustrates the garment wherein the garment tapers toward the foot end when the garment is in a partially open position.

However, Basch and Cantwell fail to disclose that the garment tapers to the foot end when in the closed position.

Schaye discloses a fastener assembly for garments for use on a garment that is capable of being used on a baby when the baby is asleep (see column 1, lines 12-18). The garment comprises an elongated shell that opens by way of sliders for providing a ventilation space in the garment. Schaye illustrates that the garment may comprises a tapered end when in the closed position (see Figs. 6).

Regarding claim 14, Schaye discloses the use of a pair of sliders on the garment such that the sliders may be located higher or lower on the garment/bag as desired to provide an opening or vent whereby a caretakers hand may be placed at various locations within the garment to access the user of the garment (see column 6, lines 55-65).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the garment for use with babies as disclosed by Basch, with the tapered end configuration, as taught by Schaye because Schaye illustrates that this configuration may be used

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on a garment for babies to use when sleeping. Furthermore, the tapered configuration provides a more nestled feeling for the baby when the baby is placed in the garment and the tapered configurations allows the baby to maintain a higher degree of warmth when the garment is closed because the baby's limbs will be closer together.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the garment of Basch to provide a pair of sliders as adjustable closure means for the garment, as taught by Schaye, because they allow the vent to be located at various locations along the length of the garment.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Basch and Cantwell, as applied to claim 11 above, and further in view of Li (6,718,577).

Basch and Cantwell disclose features described above. Specifically, Basch discloses the features as described above wherein a slide fastener 4 can be opened or closed, thereby opening or closing the vent for ventilation of the inner volume of the garment. The two sides of the garment created when the slide fastener is in the open position function as separable edges. Basch's Fig.6 illustrates the garment wherein the garment tapers toward the foot end when the garment is in a partially open position. The garment may be used as a blanket for a baby.

However, Basch and Cantwell fail to disclose that a mesh may be placed over the vent opening of the garment.

Li discloses a ventilated blanket for use by a baby (see column 1, lines 15-25). Li discloses the need to provide an effective way of preventing a baby from removing a blanket while providing increased ventilation to the baby (see column 1, lines 17-25). Li further discloses



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the use of a mesh covering in the blanket to allow air flow through the blanket (see column 3, lines 36-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Basch's vented garment for use as a sleeping bag for a baby with mesh covering, as taught by Li, because Li provides sufficient motivation to provide ventilation on baby blankets while maintaining the blanket on the baby. Basch discloses a blanket for a baby that provides ventilation, but the baby may remove portions of his/her body from the blanket through the vent openings. Li's suggestion of the provision of mesh over apertures in a baby blanket solves the problem at hand.

#### ***Response to Arguments***

6. Applicant's arguments filed on 1/6/2005 have been fully considered but they are not persuasive.

Regarding the applicant's argument on page 9 that Garrigues does not disclose a vent in the overlying portion of the shell, the examiner disagrees. The claims are examined given the broadest possible interpretation. As previously stated, Garrigues discloses a foot vent 40 in an overlying portion of foot end piece 16 between the left and right sides of the shell (see Fig.3). As broadly claimed and therefore interpreted, the vent 40 is located on the topmost half of the invention. As such, the topmost half of the invention is considered to be the overlying portion of the invention. Furthermore, viewing the invention as it is illustrated in Fig.7B, it is clear that the vent 40 overlies the occupant.

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Regarding the applicant's argument on page 10 that Basch does not disclose a vent, the examiner maintains the contention that "when the slide fastener 4 is in the open position, it creates an open vent in longitudinal direction of the overlying portion of the garment adjacent to the foot end between the left and right side of the garment."

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lms



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